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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202732
Party	Plaintiff EcoWater Systems LLC
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Submission	Motion to Amend Pleading/Amended Pleading
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ECOWATER SYSTEMS LLC,	)	
	)	
Opposer	)	
	)	Opposition No.: 91202732
v.	)	Serial No. 85/094,582
	)	Mark: ECOLAB
ECOLAB USA INC.,	)	
	)	
Applicant/Counterclaimant	)	

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**OPPOSER'S MOTION TO AMEND NOTICE OF OPPOSITION TO MODIFY  
GROUNDS FOR OPPOSITION OF SERIAL NO. 85/094,582**

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Opposer hereby moves the Board pursuant to 37 CFR §2.107, Federal Rule of Civil Procedure 15, and TBMP §§ 507.01 and 507.02 for leave to amend its Notice of Opposition of Applicant's Serial No. 85/094,582.

Opposer's Amended Notice of Opposition adds a second count for opposition on grounds of lack of bona fide use in commerce prior to the filing of Applicant's use-based application for registration under § 1(a) of the Lanham Act. The Amended Notice of Opposition also seeks remedy under § 18 of the Lanham Act.

"Pleadings in an opposition proceeding against an application filed under § 1 or 44 of the Act may be amended in the same manner and to the same extent as in a civil action..., except that, after the close of the time period for filing an opposition..., an opposition may be not be amended to add to the goods or services opposed." 37 CFR § 2.107. The '582 application was filed under § 1 of the Act. Opposer's proposed Amended Notice of Opposition does not add to the goods or services opposed, but instead adds to the grounds for opposition and seeks relief under § 18 of the Act.

At this stage in the proceedings, "a party may amend its pleading only with ... the Court's leave. The Court should freely give leave when justice so requires." FRCP 15(a)(2). "This is so even when a plaintiff seeks to amend its complaint to plead a claim other than those stated in the original complaint...." TBMP § 507.02. Opposer has standing on grounds of likelihood of confusion and therefore has the right to assert other grounds in this proceeding. *See* TBMP § 309.03(b) (citing *Enbridge, Inc. v. Excelerate Energy LP*, 92 USPQ2d 1537, 1543 n.10 (TTAB 2009)). Here, the additional grounds for cancellation is listed under Count II of the Amended Notice of Opposition, namely, that at the time of filing the '382 application Applicant had no bona fide use of the ECOLAB mark in commerce on or in connection with water filtering units other than in the fields of commercial, institutional or industrial use.

In view of the foregoing, it is respectfully requested that this Motion to Amend Opposer's Notice of Opposition to include a second count describing second grounds for opposition and to include a prayer for relief under § 18 of the Act be granted, and that Opposer's Amended Notice of Opposition as provided herewith be accepted and instituted.

Dated this 26th day of June, 2012.

Respectfully submitted,

ECOWATER SYSTEMS LLC

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## **CERTIFICATE OF ELECTRONIC FILING AND SERVICE**

I hereby certify that the foregoing document was filed electronically with the Trademark Trial & Appeal Board and that a copy was served on Applicant on June 26, 2012, via U.S. First Class Mail, in an envelope addressed as follows:

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